Office - Supreme Court, U.S.
FILED
MAY 2 1984
ALEXANDER L. STEVAS
CLERK

(5)

NO. 83-728

In the Supreme Court of the United States

OCTOBER TERM, 1983

HERB'S WELDING, INC. and
UNITED STATES FIDELITY & GUARANTY CO.

Petitioners

VERSUS

ROBERT H. GRAY

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JOINT APPENDIX

WOOD BROWN III
MONTGOMERY, BARNETT,
BROWN & READ
1800 FIRST NATIONAL BANK
OF COMMERCE BUILDING
NEW ORLEANS, LOUISIANA 70112
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ATTORNEYS FOR PETITIONERS
(Attorneys Continued Inside Cover)

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

8pp

BEST AVAILABLE COPY

HON. REX E. LEE
SOLICITOR GENERAL OF THE
UNITED STATES
DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

JAMES J. BRADY, ESQ.
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ALEXANDRIA, LA. 71301

TABLE OF THE PARTS OF THE RECORD INCLUDED (RULE 30.5)

1. Docket sheets of the court below 1
2. Decision and Order of the Administrative Law Judge (original)* 6
3. Decision and Order of the Benefits Review Board (Original)* 6
4. Per curiam order of the United States Court of Appeals for the Fifth Circuit (original)* 6
5. Decision and order on Remand by the Administrative Law Judge* 6
6. Decision and order of the Benefits Review Board (on remand)* 6
7. Decision of the United States Court of Appeals for the Fifth Circuit and per curiam order denying the application for Rehearing* 6

The following portions of the record are agreed upon by the parties and are submitted in compliance with Rule 30.1 of the Rules of this Court:

(1) Relevant Docket Entries in the Courts below:

EDITOR'S NOTE

PAGES 2 through 5 WERE POOR HARD COPY AT THE TIME OF FILMLNG. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

397 AJ-132

SUBJECT	CROSS APPEAL NO.	CASE NUMBER
X		82-4147

CIRCUIT'S APPEAL ____ FROM ____ DISTRICT OF ____ AT Louisiana Case

DATE DOCKETED 04/20/82 DIS FEE PAID Pd. CCA JUDGE ____

DATE NOTICE OF APPEAL FILED ____

DC DOCKET NUMBER BRB Nos. 78-431 & 81-643 REPORTER ____

HERB'S WELDING and UNITED STATES
FIDELITY & GUARANTY COMPANY,

Petitioners,

versus

ROBERT H. GRAY and THE DIRECTOR,
OFFICE OF WORKERS' COMPENSATION
PROGRAMS, UNITED STATES DEPARTMENT
OF LABOR,

Respondents,

APPEARANCE FILED—DATE	CODE	ATTORNEYS FOR APPELLANT	ARG
4-27-82	✓	John F. Simon, P.O. Box 6118, Alexandria, LA 71301 (318-445-6471)	✓
		MONTGOMERY, BARNETT, BROWN & READ:	
5-13-83	X	Wood Brown,III, 1800 First National Bank of Commerce Bldg.,New Orleans,LA 70112	
6/7/83	✓	FOR AMICUS: KERR-MC GEE CORP. Christopher Tompkins, 4700 One Shell Square, NOLA 70139 581-5144	
		FOR AMICI TEXACO ET AL.	
JUN 10 1983	✓	Robert M. Contois, Jr., 225 Baronne St, 25th fl., NOLA 70112 (525-6401)	

APPEARANCE FILED—DATE	CODE	ATTORNEYS FOR APPELLEE	ARG
		T. Timothy Ryan, Jr., Solicitor of Labor, U.S. Dept. of Labor, Sta. N-2716, NDOL, Wash., D.C. 20210 FTS 359-8461	
05 27 82	✓	Joshua T. Gillelan, II -do- N-2620	✓
06-23-82	X	James J. Brady, P.O. Box 1792, Alexandria, LA 71301 318/ 442-4501	
2 2/83	✓	E. Gerald Henderson, 710 Murray St.,Alexandria,LA 71301	

OTHER INTERESTED PARTIES

Benefits Review Board, U.S. Dept. of Labor, 1111 - 20th St., N.W., Sta. 757, Wash., D.C. 20036

FILED

CASE CALENDARED

TITLE: HERB'S WELDING, ET AL. -vs- ROBERT H. GRAY 82-4147

1. RECORD, EXHIBITS AND BRIEF INFORMATION	Filing
3-24-82 Partial Record on Cert. List / Record on Appeal	No. of Vols. 2 ✓
Supp. Record	No. of Vols.
Second Supp. Record	No. of Vols.
Third Supp. Record	No. of Vols.
5-26-82 Exhibits ☐ Env ✓ ☐ Box ☐ Pkg ☐ Roll	
Exhibits ☐ Env ☐ Box ☐ Pkg ☐ Roll	
Appendix ☐ (Pt)	
7-8-82 Record Excerpts ✓ 10 vols to 6/09	
Supp. Certified List	
Briefing Notice Sent ✓ 7-26-82	
6/09/82 Brief for Appellant ✓ 7-26-82	
Brief for Appellant	
Brief for Appellant	
Brief for Cr. Appellant	
8-02-82 Brief for Appellee ✓	
OCT 1 1982 Brief for Appellee DIRECTOR ✓	
Brief for Appellee	
Brief for Cr. Appellee	
8-13-82 Reply Brief for Appellant ✓	
OCT 15 1982 Reply Brief for 2d Appellee 10-4-82 ✓	
Supp. Brief for Appellant	
Supp. Brief for Appellee	
Brief for Amicus	
Intervenor	
Rule 28(j) letter—Appellant	
2/23/83 Rule 28(j) letter—Appellee (CA)	

A. EXTENSION Pfg. Motion for:	Order Pfd.	Ext. to
Transcript		
Transcript		
Transcript		
Appellant's Brief		
Appellant's Brief		
Appellant's Brief		
7/9/82 Appellee's Brief (Joint)		7/26/82
Appellee's Brief		
Appellee's Brief		
Reply Brief		

B. CALENDAR INFORMATION
Special Panel
Summary Panel
12-21-82 Case Argued to 2-2-83 ☐E ☐W ☐E ☐
Case Cont'd for Reassignment
Case Reassigned to ☐E ☐W ☐E ☐
Hearing Set CC-HT-TAR
2-2-83 Case Argued ☐ by Appellant ☐ by Appellee
Case Sub w/o Arg ☐ by Appellant ☐ by Appellee

C. OPINION INFORMATION ✓			
4-12-83 Opinion Circulated			
CC Affirmed			
Reversed			
Affd in Pt	P.C.		Cons. Appls
Vacated	Signed		Dis
Dismissed	Rule 21		Dis. in Pt
Opinion Withdrawn			

MISCELLANEOUS FILINGS	Filing
Dup. Notice of Appeal and Clerk's Statement of Docket Entries	
Papers Transf. from Misc. No.	
Order of DC Granting Appeal IFP	
Order of DC Appointing Counsel	
Affidavit of Financial Status	
CJA 20 Appt / Voucher Filed	

AGENCY REVIEW CASES	Filing
04/21/82 Petition for Review of Order (S) of ☐ NLRB ☐ FERC ☐ ICC ☒ BRB	
Application for Enforcement—NLRB	
Answer to Application for Enforcement	
Cross Application for Enforcement	

D. MISCELLANEOUS INFORMATION	
4/28/83 Mdte for Ext.—Ext. to	CA 5/12 5/16 R 28 (j) Ltr.
Mdte for Ext.—Ext. to	
05-17-83 Request for Rehearing (P)	
Response for Rehearing ☐ Appellee ☐ Reg ☐ En Banc	
5-24-83 Request for Rehearing (P)	
Response of ☐ Appellant ☐ Appellee ☐ Reg ☐ En Banc	
7-5-83 Order Denying Rehearing (P) p 6171	
☐ Dismissing	
☐ Opinion (P)	
☐ Order re Petition for Rehearing (P)	

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NO.

8. MOTIONS

Filing Motion to or for:	Response Filed By	Date	Granted	Denied	By Court	By Clerk	Date
Mandamus							
Reinstate Appeal							
Stay Further Proceedings in CA							
Stay Pending Appeal							
Injunction Pending Appeal							
Consolidate Appeals W/							
Leave to Appeal IFP							
Bail Pending Appeal							
Withdraw as Counsel							
Appointment of Counsel							
Supplement Record							
Expedite							
File Brief in Excess Pgs.							
File Brief in Excess Pgs.							
Dismiss by Appellant							
Dismiss by Appellee							
Amicus Curiae							
File Supp. Brief							
Stay of Mandate							
Recall of Mandate							
Intervene							
Intervene							
File Reply Br. out of time							

9. OTHER DOCKET ENTRIES

3/23/82	Flg. Motion of Respondent, Director, for leave to file brief out of time. (GRANTED 10/1/82 GB)
5/16/83	Flg. Motion of Texaco, Inc., Gulf Oil Corp., and Amoco Production Co., USA for leave to file an amici curiae brief in support of application for rehearing en banc. [illegible]
5/26/83	Flg. Motion of Kerr-McGee Corporation for leave to file an amicus curiae brief in support of application for rehearing
5/27/83	Flg. Order GRANTING motion of Texaco, Inc., Gulf Oil Corp. and Amoco Production Co., U.S.A. for leave to file an amici curiae brief in support of petitioner's application for rehearing en banc. (CC)
5/27/83	Flg. Brief of amici curiae, Texaco, Inc., Et Al., in support of application for rehearing en banc. (J)
6/1/83	Flg. Order GRANTING motion of Kerr-McGee Corp. for leave to file an amicus curiae brief in support of the applications for rehearing. (CC)

10. JUDGMENT OR MANDATE INFORMATION

5/2/83	Bill of Costs
	Flg. & Entg. Judgment
	Msg. Copy of Jdgt. to Bd & Crsl.
	Mandate Stayed to
7/14/83	Jdgt. as Mdt. Issd. to Clerk
	Jdgt. as Mdt. Recd. to Clerk
	Dismissal Issd. to Clerk
7/14/83	Record on Appeal Recd. to Clerk
7/14/83	Exhibits Recd. to Clerk

11. SUPREME COURT INFORMATION

	Notice of Appeal to S.C.
	Preparing Proceedings on Certiorari 156
	Preparing Supp. Proceedings on Cert.
	Transmitting Orig. Exhibits to S.C.
	Order of S.C. —Ext. to
11-14-83	Notice of Flg. of Cert. Pet. on 10-14-83
3/23/84	Order of S.C. ☐ Denied ☑ Granted
	Notice of Denial of Pet. for Rehearing
	Opinion of S.C. dated
	Judgment of S.C.

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Date	Filings-Proceedings
06/10/83	Flg. Brief of Amicus Curiae, Kerr-McGee Corp., in support of petitioners' application for rehearing en banc (J)

(2) Relevant Pleadings, Jury Instructions, etc.

(None. This case arose through the administrative procedure provided in 33 U.S.C. 921)

(3) Findings, Conclusions Opinions

(a) The original decision and order of the administrative law judge is attached to the petition for certiorari as Appendix C (pages A-14 through 18).

(b) The first decision and order of the Benefits Review Board is attached to the petition for certiorari as Appendix D (pages A-19 through 37).

(c) The first Opinion of the United States Court of Appeals for the Fifth Circuit is attached to the petition for certiorari as Appendix E (page A-38).

(d) The Decision and Order on Remand of the administrative law judge is attached to the petition for certiorari as Appendix F (Pages A-39 through 45).

(e) The Decision and Order of the Benefits Review Board (unpublished) is attached to the petition for certiorari as Appendix G (Pages A-46 through 49).

(4) The judgment, order or decision in question is the decision of the United States Court of Appeals and the denial of the application for rehearing and suggestion for rehearing en banc, which are attached to the petition for certiorari as Appendices A and B (Pages A-1 through 18).